

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JOEL RICH and MARY RICH,	X	
	:	Civil Action No. 1:18-cv-02223
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
FOX NEWS NETWORK, LLC, MALIA	:	
ZIMMERMAN in her individual and professional	:	
capacities, and ED BUTOWSKY, in his individual	:	
and professional capacities,	:	
	:	
Defendants.	:	
	X	

**DECLARATION OF ELI J. KAY-OLIPHANT IN SUPPORT OF  
PLAINTIFFS' CONSOLIDATED OPPOSITION TO  
DEFENDANTS' MOTIONS TO DISMISS**

I, Eli J. Kay-Oliphant, hereby declare as follows:

1. I am a partner at the law firm of Massey & Gail LLP, counsel of record for Plaintiffs Mary Rich and Joel Rich. I have personal knowledge of the facts set forth in this declaration and make this declaration in support of Plaintiffs' opposition to Defendants' joint motions to dismiss.

2. The video entitled "Report: Slain DNC Staffer Had Contact with WikiLeaks," is on the FoxNews.com website at <http://video.foxnews.com/v/5436001644001/?#sp=show-clips>. I last accessed the video on June 3, 2018.

3. The video entitled "Rod Wheeler on His Investigation into DNC Staffer's Murder," is on the FoxNews.com website at <http://video.foxnews.com/v/5437207289001/?#sp=show-clips>. I last accessed the video on June 3, 2018.

4. The video entitled “Was DNC Staffer in Contact with WikiLeaks?” is on the FoxBusiness.com website at <http://video.foxbusiness.com/v/5437006995001/?#sp=show-clips>. I last accessed the video on June 3, 2018.

5. Attached hereto as Exhibit 1 is a true and correct copy of the first page of the Insider.FoxNews.com website found at <http://insider.foxnews.com/tag/ed-butowsky>. I accessed and printed this page on June 2, 2018.

6. Attached hereto as Exhibit 2 is a true and correct copy of the FoxBusiness.com website found at <https://www.foxbusiness.com/person/b/ed-butowsky>. I accessed and printed this page on June 2, 2018.

7. Ed Butowsky’s personal YouTube channel may be found at <https://www.youtube.com/user/edbutowsky/videos> and his personal website may be found at <http://www.edbutowsky.com/category/fox-news/>. I last accessed these websites on June 4, 2018.

8. Ed Butowsky’s page on his corporate website may be found at <http://www.chapwoodinvestments.com/fox-business/ed-butowsky-joins-varney-co-2/>. I last accessed this website on June 4, 2018.

9. Attached hereto as Exhibit 3 is a true and correct copy of an article published on Buzzfeed on May 24, 2017, and available at <https://www.buzzfeed.com/amphtml/josephbernstein/the-man-behind-the-seth-rich-private-investigation-has-a>. I accessed and printed this website on June 2, 2018.

10. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the *Wheeler v. Twenty-First Century Fox, Inc. et al.*, No. 17-cv-5807 (GBD), February 28, 2018 Transcript on Defendants’ Motion to Dismiss.

I declare under the penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 4<sup>th</sup> Day of June, 2018,

/s/ Eli J. Kay-Oliphant

Eli J. Kay-Oliphant

**CERTIFICATE OF SERVICE**

I hereby certify this 4th day of June, 2018 that I caused a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification to the attorneys of record.

*s/ Elisha Barron*

Elisha Barron

# EXHIBIT 1



## EXHIBIT 2

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## Ed Butowsky

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### Latest from Ed Butowsky



### One Tool Left to Jumpstart Economy: Lower Taxes



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## If You Have a Company Pension, Consider Retiring Today

## Investor Sentiment Signaling Bad News for Equities?

## HFT Critics Have it All Wrong

## Buffett's Recent Track Record Belies His Legendary Status

## The President's Healthcare Gamble

## A Letter to the President



## Recipe for an Economic Recovery: Complete Makeover

## Where is Your Outrage?



## Ready or Not, Stagflation Is Here

## What the Country Needs, Now

## Our Toolbox Is Empty -- Until November

## Could ISIS Affect Your Investment Portfolio?



**Strong Returns in 2014? May be Time to Fire Your Adviser!**



**Ebola? ISIS?! What's REALLY Behind Wall Street's Volatility?**



**Wake Up America**



**The President's Disconnect with Economic Reality**



**The Government Redefines 'Investment'**

**Don't Forget This Key Data Point**



## **Investors Must Drill Through Headlines**



## **Investment Moves to Make Right Now**



## **Obama Chose Monetary Policy - And You're Feeling It**

## **You Aren't Being Paid to Play**



## **Your Taxes Have Already Been Raised**

## **When the Herd is Zigging, Start Zagging**



## **Earnings Remain the Market's Driving Force**



**Keeping the Faith in Tough Times**

**Repairing the Sputtering Engines of Growth**

**Muni-Bond Investors Should Thank Europe**

**Who Forced Anyone To Buy Facebook?**



**Don't Be Afraid to Sit Out Facebook's IPO**

**Getting the J.P. Morgan Story Right**

**Are You Losing Power?**

**No Worries in Stock Market? Not Quite**

**Business as Usual in the Oil Pits**

**Look Before You Leap**



**The Market's Current Trend Isn't Your Friend**

**Give Credit Where Credit is Due**

**Stocks Don't Pass the Smell Test**

**Don't Thank the Fed for Record Highs, Thank the CEOs**

**Obama Policies Keeping Lid on Stock Prices**

## The Facts on Romney's Tax Returns

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## EXHIBIT 3

TECH

## The Man Behind The Seth Rich Private Investigation Has A White House Connection

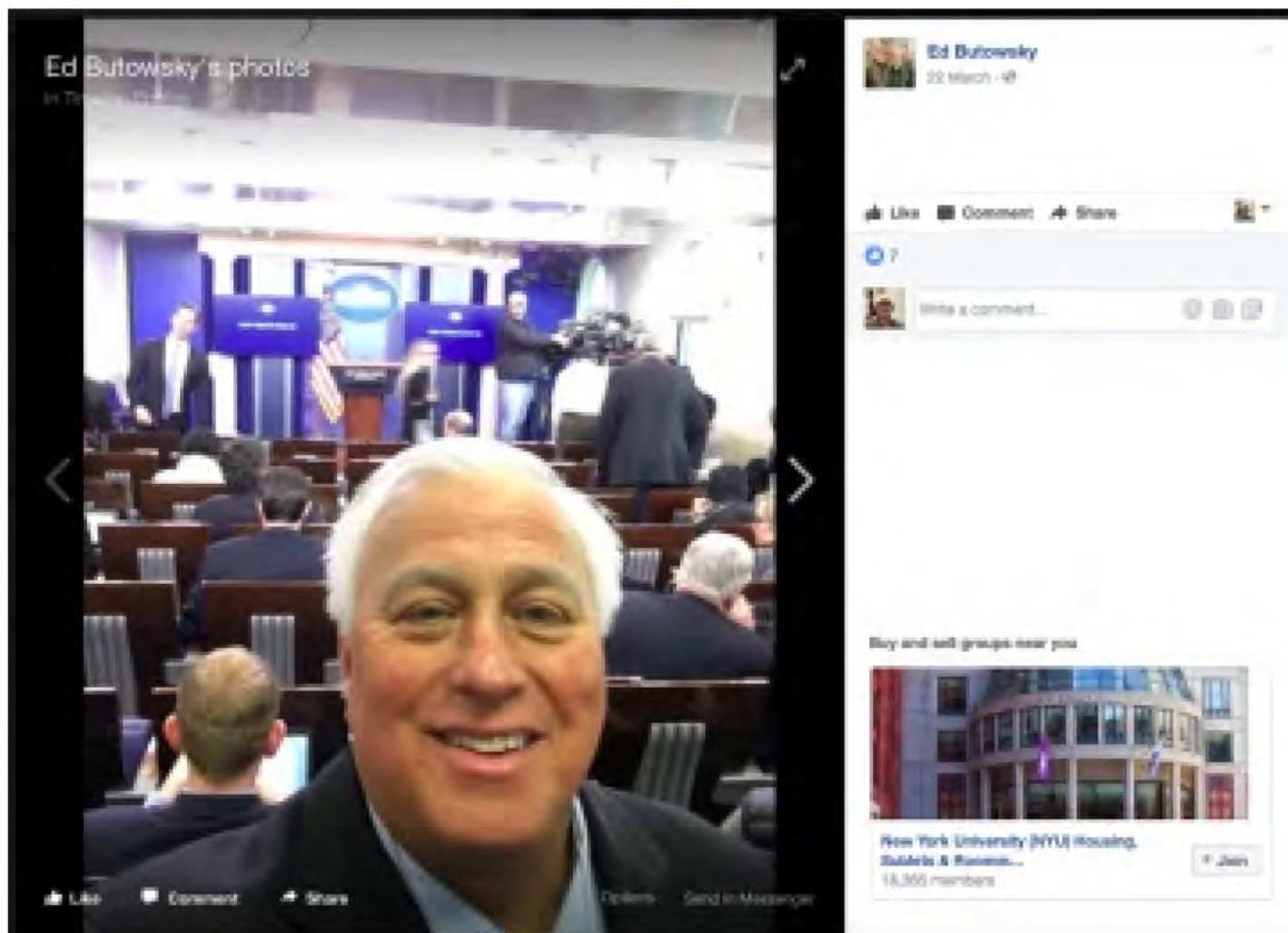
The Rich family is "in shock" that Ed Butowsky is linked to Steve Bannon and the Mercer family.

Posted on May 24, 2017, 4:06:11 PM GMT



**Joseph Bernstein**

BuzzFeed News Reporter



Facebook





Ed Butowsky, the Dallas wealth manager and frequent Fox News guest who facilitated a private investigation into the murder of Seth Rich, is friends with and claimed on his website to serve on the board of an organization started by White House Chief Strategist Steve Bannon.

"I consider him a friend and a very nice man," Butowsky told BuzzFeed News of Bannon.

According to his website, Butowsky "serves as a Board Member for Reclaim New York, a non-partisan, non-profit think tank dedicated to advancing a grassroots conversation about the future of New York." [Per tax filings](#), Bannon was Reclaim's vice chairman. (The group's secretary and treasurer are Jennifer and Rebekah Mercer, the powerful daughters of right-wing moneyman and Trump champion Robert Mercer.)

A spokesperson for Reclaim told BuzzFeed that Butowsky "has never had any formal involvement with the organization." Furthermore, per the spokesperson, Steve Bannon left the organization's board in August 2016.

Butowsky and Bannon know each other through Breitbart News, of which Bannon was executive chairman and to which Butowsky has contributed articles. In 2015, Bannon interviewed Butowsky for a Breitbart radio program.

Both Butowsky and a White House official deny speaking about Seth Rich.

Over the past week the Rich story has captivated conservative media, following a Fox News report that linked the murder of the 27-year-old Democratic National Committee Staff member with email hacks of the DNC that may have helped then-candidate Trump in his campaign against Hillary Clinton. Such a finding would contradict the view, widely held in the intelligence community, that Russian intelligence was behind the theft — a key point for those who believe there was an improper relationship between the Trump campaign and the Russian government.

Fox's report — a [conspiracy theory with no corroborating evidence](#) — was based on an interview with a private investigator, Rod Wheeler, who Butowsky introduced to the Rich family and offered to pay for. (Fox News yesterday retracted its story.) The Rich-as-leaker narrative's rise is the clearest example yet of the way an insurgent pro-Trump media has been able to push dubious stories beneficial to the administration into the limelight.

And the news that their benefactor has ties to a key figure in the administration — and the godfather of the pro-Trump media — has left the Rich family stunned.

"The family is in shock to learn that Ed Butowsky is both friends with and served on a board with Steve Bannon," Brad Bauman, a spokesman for the Rich family, told BuzzFeed News Wednesday. "We are very much trying not to rush to judgment in order to allow this story to develop."



Butowsky has long said that he heard about the Rich case from a friend, though he can't remember whom, and that he was motivated to connect the Rich family with Wheeler because he was moved by their story.

In an interview Tuesday outside Del Frisco's Steakhouse in Manhattan, where he was watching pigeons eat, Butowsky told BuzzFeed News that he had never discussed the Rich case with Bannon, and qualified their friendship as warm but not close.

"It's not like I have a Steve Bannon teddy bear," he said. "I've never eaten a meal with the guy."

A photograph on Butowsky's Facebook page shows him in the White House briefing room on March 22. Butowsky did not comment on the record why he was at the White House, but did clarify that he had not met with any White House officials.

Butowsky added that his association with Reclaim was distant and purely based on his wealth management expertise.

"Am I really on the board?" Butowsky asked when informed that his website claimed he was on the board. "I've never been to a board meeting."

Prior to his career as a wealth manager — his clients include a number of athletes and celebrities — Butowsky worked for nearly two decades at Morgan Stanley, where, according to his LinkedIn, he ran one of the highest earning teams at the firm.

## UPDATE

May 24, 2017, 5:29:42 PM GMT

This story has been updated to include Reclaim New York's assertion that Ed Butowsky never served

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## UPDATE

May 25, 2017, 4:27:53 PM GMT

This story has been updated to reflect the fact that Ed Butowsky was watching pigeons eat but not personally feeding them.

Joe Bernstein is a senior technology reporter for BuzzFeed News and is based in New York. Bernstein reports on and writes about the gaming industry and web culture.  
Contact Joseph Bernstein at [joe.bernstein@buzzfeed.com](mailto:joe.bernstein@buzzfeed.com).

## EXHIBIT 4

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROD WHEELER ,

Plaintiff,

v.

17 CV 5807 (GBD)

TWENTY-FIRST CENTURY FOX,  
INC., ET AL.,

Defendants.

New York, N.Y.  
February 28, 2018  
10:38 a.m.

Before:

HON. GEORGE B. DANIELS

District Judge

APPEARANCES

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Attorneys for Plaintiff

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Attorneys for Defendant Ed Butowsky

BY: DAVID BUTLER HARRISON

1 MR. BAINE: And he did make those statements on  
2 television for which he was paid.

3 So on the arbitration argument the argument is not  
4 that the quotes on the website were compensated but that he was  
5 compensated for appearing on Fox television saying the same  
6 things.

7 THE COURT: But he wasn't compensated by Fox for the  
8 statements that were attributed to him in the article.

9 MR. BAINE: That's correct.

10 THE COURT: And the investigation, Fox News did not  
11 employ him pursuant to this written agreement that has the  
12 arbitration clause to do the investigation for the Riches.

13 MR. BAINE: That is true. They did not go to him and  
14 say we'd like to employ you to do this investigation for us.  
15 But they did identify him in the article as a Fox News  
16 contributor.

17 THE COURT: Right.

18 MR. BAINE: Which he is.

19 THE COURT: But it's not your contention that he was  
20 in any way employed by Fox News to do the investigation for the  
21 Riches.

22 MR. BAINE: Not to do the investigation.

23 THE COURT: Right.

24 MR. BAINE: But to appear on television.

25 THE COURT: But he didn't -- okay. To appear on

relationship with Fox. He has appeared on Fox News programming as well as other television shows where he has spoken about his financial expertise with respect to the economy and the stock market, advising clients on financial matters. That is the extent of it.

THE COURT: But he clearly had some -- and maybe this isn't a general jurisdiction question -- but he clearly has some interest in the Seth Rich story.

In what way does he have an independent interest in the Seth Rich story or a combined interest in the Seth Rich story with Fox News?

MR. HARRISON: As is alleged in the complaint, Mr. Butowsky was a mere intermediary between Rod Wheeler who was investigating the Seth Rich case and Malia Zimmerman who had an interest in the case and was writing a story about it.

THE COURT: But I don't know how he got in the middle of this. Through his relationship with Fox News? Through his relationship with Zimmerman? Through his relationship with Wheeler? I'm not sure.

MR. HARRISON: I think in this case in particular his relationship with Ms. Zimmerman, I think he had a relationship with her, he's worked with her in the past. He's worked with people at Fox in the past and I think as a result of that he made an introduction.

THE COURT: He made an introduction of who?

1 MR. WILLEMIN: Precisely the point, your Honor. He is  
2 now --

3 THE COURT: If you have sources at the FBI saying that  
4 there's such information, doesn't that -- isn't that part of  
5 the investigation?

6 MR. WILLEMIN: I would disagree, your Honor. And I  
7 would say --

8 THE COURT: You would say that's not part of his  
9 investigation?

10 MR. WILLEMIN: Your Honor, what I would --

11 THE COURT: How could he have conversations with --  
12 and have a source at the FBI and pursue that source and then  
13 publicly say he has that source that's giving him that  
14 information? And you say it has nothing to do with his  
15 investigation. It's not part of the investigation.

16 MR. WILLEMIN: To step back on the source. The source  
17 that's as issue here, as Butowsky and Zimmerman at Fox knew and  
18 know, is a source that -- is Butowsky.

19 THE COURT: No. Butowsky is not a source at the FBI.

20 MR. WILLEMIN: Butowsky and Zimmerman both advise  
21 Mr. Wheeler that there was a source in a law enforcement agency  
22 that has seen --

23 THE COURT: Why does that matter? That doesn't  
24 matter. He said that he got that information.

25 MR. WILLEMIN: Understood.

1 MR. WILLEMIN: He worked as a contributor for ten  
2 years for Fox.

3 THE COURT: As a result of the article, what's the  
4 evidence that when the article came out and this defamatory  
5 statement was published that that was the reason and the time  
6 when they decided that they were no longer going to do  
7 business?

8 MR. WILLEMIN: It wasn't at the moment the article  
9 came out. I think that's the point. I think that's actually  
10 the distinction between a circumstance where someone says  
11 you're an imbecile. You're out of here.

12 THE COURT: After they got into the fight over this  
13 between the two of them?

14 MR. WILLEMIN: I don't have the exact date of the last  
15 time he was on Fox.

16 THE COURT: Not the date. Are you claiming that  
17 they -- you don't claim that they fired him as a result because  
18 of the publication.

19 MR. WILLEMIN: No. They fired him because of what the  
20 publication caused, which was the world to believe that  
21 Mr. Wheeler was completely incompetent. And so --

22 THE COURT: What basis do you have to say that as  
23 opposed to they fired him because while they were calling him a  
24 liar, he was calling them a liar?

25 Did they fire him before or after he filed a lawsuit?